A LETTER

ON

THE PROPOSED CHANGE IN THE LAWS

PROHIBITING MARRIAGE

BETWEEN THOSE

NEAR OF KIN.

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BY THE

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OXFORD,

JOHN HENRY PARKER;

J. G. F. AND J. RIVINGTON, LONDON.

1842.

The following Letter was originally written in consequence of the great urgency with which the firm, employed to obtain signatures in favour of the unions in question, sought that of the writer, after more than one refusal. He could not but suppose that the same urgency would be employed towards others, who might not equally have considered the subject, and wished to prevent the Clergy from being taken by surprise.

It is now reprinted at the desire of others.

Christ Church,
Lent, 1842.

PROPOSED CHANGE IN LAWS PROHIBITING MARRIAGE BETWEEN THOSE NEAR OF KIN.

My Dear Sir,

One of the anxious characteristics of the present day is the suddenness with which ancient customs or ordinances are questioned, censured, changed, before the majority even of those whose opinions might reasonably be listened to, have had time to form an opinion, or examine the grounds of it, if they have one. We are taken on all sides by surprise. Instead of assuming that an existing custom has a good ground, until it be proved to be destitute of it, it is presumed rather that it has none, unless it can be *shewn* to have it. This is a shallow way of proceeding; for in most practical matters, until they come to be questioned, we have no occasion to inquire into the principles upon which the received custom is founded. Life is given for acting, not for inquiring. If, then, we are put suddenly on the defensive, we cannot at once ascertain all the grounds upon which the custom assailed ought to be maintained; we have acted out of obedience, or instinct, or feeling, and cannot at once analyse all the reasons why this line of action was right; we know not which grounds to put foremost, which are really the strongest, or *the* grounds; and so, while some hesitate, some abide passively by what they have received, others are induced to abandon what they do not at once see the ground for; and the change is made before people have had time to collect their thoughts.

This has, in part, happened already, upon a very serious subject, the bearings of which are probably little understood by those who advocate the change proposed, most of whom would probably be shocked, if they knew

whither what they are now setting in motion would in the end lead. The case is this,—a number of persons, it is reported, (some, I grieve to say, are said to be clergymen,) wish to marry the sisters of their deceased wives; this union, which has been all along contrary to the law of the Church, has lately been made, *ipso facto*, null and void by the law of the land; whereas, before, it was valid in civil law, unless a suit was instituted against it; if this were done, it became void at once. Lord Lyndhurst's Act, accordingly, only restricted a fraud, not uncommon, of instituting a collusive suit, which not being carried on, no other parties could institute another, and so civil rights were obtained for the children, as though born in lawful marriage. An end was put to this collusion, and all such unions declared absolutely null and void for the future, at the same time that the civil rights of all children born of such unions before, were secured. I notice this, because a serious argument has been founded upon it.

Of this restriction some interested parties are now compassing the repeal; should they succeed, (which one cannot contemplate without great dismay, and which will not be, unless persons are taken by surprise,) the laws of the Church and of the State on marriage would be at variance, and the nation would bring on itself the guilt of sanctioning incest.

The activity, however, of those interested in the repeal of the law is such, that the Church must look to it, that it be not taken by surprise. A respectable firm has been retained as solicitors: advertisements canvassing for support have appeared in most local papers; secrecy is promised to those who may wish for it; the names of clergymen are eagerly sought for to sanction it; *ex-parte* statements are sent gratuitously to them; the names of the Archbishop of Dublin and Bishop of Llandaff are used currently, to silence objections by the influence of their name and known acuteness, (although the peculiar character of the talents of these two Prelates may have been

calculated to mislead them,) it has been even represented[a] that the whole Bench of Bishops had virtually sanctioned the principle, because they assented to Lord Lyndhurst's Bill, which legitimatized the children for the past, but which was carried on the express condition that those unions should be absolutely illegal for the future. In this way the names of one hundred clergymen, chiefly in the diocese of Norwich, have been obtained, who have been rash enough to commit themselves to this measure on these *ex-parte* statements; and with this neuclus, the parties seem confident that the snow-ball will readily grow. The repeal is urged as an act of charity to the motherless children, in providing for them the best substitute for her whom they have lost, and the notion of impurity is cast back upon those who object to this union; it is even contended that the union which is the immediate subject of this canvass, is sanctioned by Holy Scripture, so that the prohibition would be an unscriptural restriction. Or, if it serves the purpose, it is contended that the prohibition of it, being inferred from the Levitical law, is no longer binding[b]; on which shewing, of course, neither would the permission, being taken from the same law, be any longer valid; and that the more, since the course of God's dealings has been, gradually to lay increased restrictions upon this holy union, and fence round marriage more sacredly. Thus, the union of brother and sister, which was of necessity allowed in the first generation after the fall, and which was, for whatever cause, permitted to Abraham[c], was by the Levitical law restrained[d]. Divorce, which was allowed to the Jews for every cause, was restricted by our Lord to that one which, by its very nature, dissolves marriage[e]. So

[a] "Observations on the Prohibition of Marriage in certain cases of Relationship by Affinity," pp. 6, 7, 23, 24. "Considerations on the State of the Law regarding Marriages with a deceased Wife's Sister. By H. R. Reynolds, jun. M.A. Barrister-at-Law." p. 11.

[b] "Observations," p. 9, sqq. "Considerations," p. 22, sqq.

[c] Gen. xx. 12. [d] Lev. xviii. 9. [e] Matt. v. 32.

that it would be contrary to the other dealings of God upon this very subject, to suppose that allowed to Christians, which was forbidden to Jews.

Our people, however, with the instinctive reverence for Holy Scripture which they yet retain, will probably not be prepared to set aside what its moral law enjoins. The other ground, on the contrary, appeals to our weak point,—to allow ourselves in any thing, which, upon a superficial view, can be made to seem unforbidden by it. To speak, then, first of it. It is contended, then, that Scripture sanctions such an union on the ground of the following words:—"Neither shalt thou take a wife to her sister to vex her, to uncover her nakedness, beside the other, in her life time[f]." From this it is *inferred* that a man might take her after the decease of the other; and this inference is the amount of the alleged scriptural warrant for these unions. It need hardly be said how precarious such an inference is; it is observable that the union with the wife's sister is no where expressly permitted; the supposed permission is only inferred from a clause in a law prohibiting it; but, as S. Basil[g] well retorts on one who in his time urged the same plea, if we might argue thus captiously on the words of Scripture, as well might it be said, that since Scripture forbids this to be done "to vex her," it did not prohibit it when there would be no "vexation," but the sisters would live amicably together. Passion, he says, would soon persuade people that such would be the case, so that a man might take both sisters at once. It is remarkable, further, that they who plead the scripturalness of these unions on the ground of this inference, themselves protest against the prohibition, as being founded upon an inference. In this case, however, the prohibition does lie so clearly in the words of Scripture, that it cannot be called an inference. Scripture prohibits peremptorily all commixtures of those of kin. "None of you shall approach to any that is near of kin, to uncover their

[f] Lev. xviii. 18. [g] Ep. 160, ad Diodor.

nakedness. I am the Lord." The solemnity of these last words might well deter any one who knew that he was one day to be judged by that Lord, from tampering with the command to which they are annexed. But if people really wish to know the meaning of that prohibition, not simply to find a plea for passion, it is plain enough. The original is still more expressive; it is literally "none of you shall approach to the flesh (and hence, near-kin שְׁאֵר) *of his flesh*," (בְּשָׂרוֹ.) Since, then, the wife is "bone of his bone, and *flesh of his flesh*," (the very word,) and again, "and they twain shall be *one flesh*," one sees not on what plea the "flesh" or "near-kin" of his wife could be held not to be included in this prohibition. As S. Basil argues, "What can be more akin to the husband than his own wife, yea, rather than his own flesh?" We need, then, go no further for a distinct prohibition in the very letter of Holy Scripture than this first verse; the more you press the very words of Scripture, the more distinctly does the prohibition appear to be conveyed in those words. And the coincidence certainly is remarkable, that S. Basil does appeal to this verse alone, as in itself containing the prohibition. But, further, in the following verses, instances are given of what is meant by "near of kin," and among these is[h] the husband's brother. Since, then, marriage is the same in the two sexes, and purity the same, and breach of purity the same, it can scarcely be called an inference to say that the union with the wife's sister is included in the general prohibition, "None of you shall approach to any that is near of kin to him, to uncover their nakedness." Certainly, it includes the specific case much more clearly than "Thou shalt not commit adultery" does fornication or other sins of impurity, or "Honour thy father and mother," obedience to kings, and respect for the grey-head. What an undutiful captious spirit is it which pleads for self-indulgence in every thing which the very letter of

[h] Lev. xviii. 16.

Scripture does not absolutely in set words prohibit; which will do nothing, give up nothing, unless it "find it in the bond," though it be ever so plain, that the whole class of actions to which it belongs is included even in the very letter, and one exactly corresponding is specified. In what way will such arguers prove, on Scripture grounds, "suicide" to be self-murder? It is plain, then, that all union with the sister of a deceased wife is condemned, in spirit, as defilement; the very words in which it is prohibited imply this; they are such as this age, so refined in words, so carnal in thoughts and actions, does not like to repeat. Will it, then, be pleaded that the "sister's wife" is not "near of kin," although the husband's brother is? And if the one union be pollution, what else can the other be?

Next, strange to say, it is alleged, and that on the authority of "some of our best oriental scholars, including Sir W. Jones[i]," that "the precepts of Leviticus are not directed against marriage[k]," or as it has been explained, that the words "uncover his nakedness" relate only to "illicit intercourse," and consequently that the unions so prohibited would become lawful when sanctioned by marriage. It is difficult even to understand this plea, for the same words are used throughout, of the deceased brother's wife and of a child's own father or mother[l]. To make the plea valid, the worst incest must be equally permitted.

Next, if any be not satisfied with these two grounds, it is argued that the Levitical law is no longer binding. Is, then, the law of marriage simply a ceremonial or a political law? Otherwise our Church clearly holds the commands which God gave by Moses concerning it, to be binding still: "No Christian man whatsoever is free

[i] Sir W. Jones was no Hebrew Scholar.

[k] Summary of Objections to the Doctrine that a Marriage with the Sister of a deceased Wife is contrary to Law, Religion, and Morality, p. 9.

[l] Lev. xviii. 7.

from the obedience of the commandments which are called Moral[m]." No reflecting earnest person (one should imagine) can think that laws so enounced as these are, and on such a subject, are of mere temporary observance. It would be well, however, that persons should bring themselves to this test, in what light they regard marriage itself. Probably it will be found that they who are so anxious to do away with restrictions, have (in many cases, at least,) imperceptibly relaxed or lowered their own views of the sacred institution itself.

It would be well, too, if they who throw out these hints of the abolition of the Levitical laws of marriage, would consider on what they are prepared to fall back. What authority have they wherewith to supply their place? The Church? But the Church, in its purer days, forbade those unions as peremptorily as the Levitical law. S. Basil appeals to the uniform practice of the Church, to his own time[n]; the Apostolic Canons, which may be looked upon as the Ante-Nicene code of the Church, forbid it; it was punished by the same sentence of long-continued excommunication as adultery[o]. This ground then, too, is abandoned, with some commonplace remarks on the supposed asceticism of the early Church[p]. Our own Church has, here as elsewhere, followed the ancient. Is the appeal then to natural instinct, which shrinks from certain unions? But natural instinct varies with the moral character. English feeling still, for the most part we are assured, shrinks from these unions as revolting and incestuous; yet every sort of incest has become habitual in nations highly civilized; as that with mothers and sisters among the Persians[q] and Egyptians; and, persons have been already found to contend[r], with no physical deterioration of the nations

[m] Art. vii. [n] Ep. 160, ad Theodor. [o] See Bingham, 16. 11. 3.

[p] Considerations, p. 45, sqq. Observations, p. 57.

[q] Tertullian, Apoll. c. 9. and other authorities in Brisson de Reg. Pers. ii. 8. and Bishop Taylor, Duct. Dub. b. 2. c. 2. rule 3.

[r] Michaelis, quoted as authority in Considerations, p. 42, note.

guilty of it. One of the advocates of these unions has already laid down maxims which go to maintain that there is no such offence as incest. It is stated[s] that "the only moral principle of interdicted unions" is that "clearly laid down by Paley," viz. that "in order to preserve chastity in families, and between persons of different sex, *brought up and living together*[t] in a state of unreserved intimacy, it is necessary, by every method possible, to inculcate an abhorrence of sexual conjunctions; which abhorrence can only be upholden by the absolute reprobation of *all* commerce of the sexes between *near relations*." In other words, the notion of incest is a fiction, in order to prevent the risk of fornication among persons brought up together; and "the *only* moral principle of interdicted unions" is one involving no morality in the act itself, but expediency only, to guard against a contingent sin. The writer, indeed, would himself shrink from this conclusion; he declares "the connexion of marriage between parent and child to be forbidden by a law of universal and eternal obligation[u]," and that the same "objections equally apply to all the lineal degrees of consanguinity, (grand-parents and grand-children,) and to most of the lineal degrees of affinity." He quotes also a saying of Mr. Justice Story, that "marriages between brother and sister *by blood* are deemed incestuous and void, and indeed repugnant to the first principles of social order and morality; *but beyond this it seems difficult to extend the prohibition upon principle.*" Where, then, is this to end? Of course there are degrees in the violation of nature; but if the first dams be broken down, where is our guarantee that the flood of incest shall be stayed? If persons be found to maintain that the marriage with a wife's sister is not incestuous, will that with the husband's brother be long held to be such? The union of the uncle with the niece, it is held, cannot be prohibited "upon principle." If a

[s] Considerations, p. 52, sqq.
[t] The italics are the author's.
[u] Considerations, p. 40.

man may take to him for a wife his own sister's child, the very substance of his sister, what ground have we for thinking that the union with his sister would be long deemed pollution? If union with a half-sister, the impress of his own father, be tolerated, is that born of his mother also so far removed?

There are, as I said, gradations, of course, in incest, as in every other sin. Natures which revolt not at some will yet revolt at others; but each outer prohibition is a fence drawn round the inner and yet more sacred; any removal of the outer brings the question close to the inner. God sets so many lines, as it were, to keep man from rushing in upon what is most sacred; whoso removes the first, risks all. There is consistency in adhering to the canons of the Church, to the principles of the Levitical law; and with these, we are assured, the principles of pure human nature coincide. But if there be any one point violated, consistency is at an end; and we are told that "the difficulty of discovering any precise limit, sufficiently distinct and universal, within which the prohibitions of marriage shall be confined, has been pointed out by all the most eminent jurists and divines who have written on the subject[x];" i. e. if the

[x] Considerations, p. 41. Grotius, Puffendorf, Michaelis, Kent, ("the Blackstone of America," Summary, p. 41.) are cited. One grieves to add the name of Bishop Taylor, l. c. who strangely vacillates, one while declaring the marriage of own brothers and sisters to be "unlawful, only because forbidden by positive law; but because the prohibition is not at all in the laws of Christ, therefore it cannot be accounted against the prime law of nature, of which that is a perfect system;" and then qualifying the statement by saying, that it "cannot be dispensed withal by any power of man, for it is *next* to an intolerable mixture, it hath in it *something* of confusion; it is of infinitely vile report, intolerably scandalous," &c. And again, "because God did afterwards make it a law, [which, according to him, is done away,] and there is now very great reason that it should be a law, and the reason is natural and will be perpetual; and all Christian nations, and all that have any formal religion, have agreed to prohibit such marriages." But what if any state calling itself Christian should tolerate that which among the civilized Egyptians had no shame? would it therefore cease to be incest?

prohibitions of the moral law and of the Church are set aside, it is found impossible to substitute any other principle. Surely, then, these admissions shall be our warning. C'est le premier pas qui coûte. The whole question is wrapped up in the first decision; it then remains only for the rest to be unravelled in proportion as passion or secular ends prevail against the remnants of natural feeling; there are no more knots to be undone,—it but hangs together until a little stronger external impulse be given to dissolve it.

And what, then, is the great benefit for which all this present evil is to be incurred, and all this future pollution entailed? Passion, of course, never wants a plea: and it is, humanity! It is supposed that, in a certain number of cases, widowers will marry the sisters of their departed wives, and so the mother be provided for them which the departed would most have desired; and for this contingency all our domestic relations are to be broken up. At present, we are by all accounted the most domestic of all nations; the prohibition of such marriages is the safeguard of our domestic relations; the sister of the deceased can be the mother of her children, because she can only be a sister to their father; the father's brother can take his niece for his own child, because she can enter into no nearer relation with him than the child of his own mother's son. All within the prohibited degrees are privileged persons; no bar can be placed to their intercourse, because no security is needed; it is guileless, because no suspicion can be entertained. Take away the restrictions, and the confidence is destroyed. This is sorrowfully confessed by Germans, who have legalized the abuses of modern Rome in the same way as is now sought to be done among ourselves. Their domestic relations are broken up; those who so stand to each other must be every thing, or they can be

It is sad so to quote Bishop Taylor, but the use which has been made of his name makes it necessary to shew how little defined his views on this doctrine were.

nothing; those who can be united in marriage, unless they are so, must, by the laws of society every where, be as strangers. There is reason to believe that Germans who know the happy confidence of our domestic relations, would gladly exchange for it that licence which has forfeited theirs.

And thus, as it will ever be, they who would outstep nature forfeit the privileges and gifts which, by the law of nature, they enjoyed; affection is sacrificed to passion; the very object which they professed to wish to secure is lost; grasping at the shadow, they lose the substance. There are surely, in a Christian land, many who share the feeling which even a heathen could appreciate;

> Ille meos, primus qui me sibi junxit, amores
> Abstulit; ille habeat secum, servetque sepulcro.

There are, surely, many Christians whose hopes being beyond the grave, their love too is beyond the grave; who can love no second with a husband's love, because they still love the first; who, looking to be re-united, though as the angels of God in heaven, after this earth, cannot on this earth displace that union by another; their union continues still, though invisible. Nay, so strong is this feeling, that many of those who contract second marriages merely do so because they have none within that privileged circle who can take the mother's place. All this would be destroyed; the happy confidence with which now the relations of a man's wife are regarded, and are to him, as his own, would be at an end; the same rules of society which now prohibit the widower from taking any guardian to his children with whom intermarriage would be likely, would then exclude these now privileged friends; the sister could not be a mother to her sister's children without being their stepmother, or the prospect of children, who must be nearer to her, as being her own; one class of persons would be driven into marriages which they half disapproved, and so a stumbling-block be put in their way and their con-

sciences defiled; another would forfeit the privileges which are a consolation of widowhood.

One would not, with these grave subjects, mix up questions of convenience; yet it must be with regret for the State, that churchmen would see one more subject thrown out which should loosen the slight tenure by which it still seems held to the Church, and a subject of fresh jarring and vexation introduced; for it being admitted by legal authority that the Canons of our Church are binding upon the clergy, they can only regard these unions as incestuous. An Act of Parliament cannot repeal a law of the Church[y]; the Church only can repeal her own acts, or set free the consciences of those bound to obey them[z]; Parliament can only

[y] Since much stress has been laid upon the supposition, that the adoption of the "prohibited degrees" is owing to the passions of Henry VIII. and upon the repeal of the Act 25 Hen. VIII. c. 22. (Observations, p. 43, sqq. Considerations, p. 13, sqq.) a note will be read with interest written by Archbishop Parker on the side of one of the "Admonitions" prefixed to the Table of prohibited degrees which he drew up.

"Hen. VIII. 25. cap. 22. This statute repealed, but yet the reason of the law doth remain which saith, that there be degrees prohibited by God's word."

The preceding note calls all such unions "incest." "Whosoever shall marry any of those whom by laws and morals we are prohibited from marrying, committeth incest." (Strype's Life of Archbishop Parker, b. ii. c. 4. p. 88.)

So, then, Archbishop Parker did not think that the repeal of man's law repealed this law, being God's; nor hesitated to pronounce the unions now contended for to be "incest."

[z] Lord Hardwicke in deciding (Middleton v. Crofts, quoted Considerations, p. 21.) "that the Canons of 1603, having been made since the Reformation, and not having been confirmed by Parliament, do not bind *the laity* in matters merely ecclesiastical," implies that they do bind the Clergy. It is urged again by the advocates of the unions forbidden by them, "The authority of these Canons of 1603 to bind *laymen* has been also doubted, even in the spiritual Courts;" again implying that their binding force on the Clergy is undoubted. (ib. p. 22.) They are then, even according to their view, binding on the Clergy, as being the acts of the Church, although deriving no authority from Parliament, which has not confirmed them. How then, having an authority independent of Parliament, can they, by a mere Act of Parliament, lose that authority?

give a civil sanction; the clergy can only look upon such commixtures, though sanctioned by the State, as legalized incests. How then, in their pastoral relations, are they to treat any who contract them? How could they, *e. g.* avoid recommending them to dissolve their union, at least as far as the act of marriage is concerned? Yet to how many this would be a snare! Ought they, again, to admit to the Communion those who in the Church's eyes are living in incest? If any did, how is he to explain his refusal to unite those whom, when united, he is not to treat as living in sin? And yet the canons prohibit his uniting them. These, and many other questions, would cruelly add to the embarrassments of our clergy.

And even if any Clergyman should, in so grave a matter, consider himself not bound by the laws of his Church, how are they to act (and they are very many and will be the great majority, when the subject has been more considered) who think these unions opposed to the law of God?

But there is another and far graver subject, more solemn in one respect than any of the preceding, at which you have yourself hinted,—if all these relaxations of the sanctity of marriage are so many forerunners of the last apostasy, and are preparing the way for that power of Satan, one of whose characteristics is "forbidding to marry." Hitherto, we have been happily exempt from all guilt of this sort. Much as there is alarming in the state of things among us, as in our unruliness and "despising of dignities," our Church here also has occupied her remarkable position among the Churches of the West, adhering to the rules of the primitive Church. Persons who know not the ground on which our Church stands, quote to us an array of names, some indeed of petty extent, but shewing that both Lutheran and reformed countries had perpetuated the abuses of modern Rome. They tell us[a] that these marriages are allowed "either as a matter of course, or upon a formal appli-

[a] Summary, p. 12.

cation to the [civil] authorities, throughout the whole of Prussia, including the Rhenish provinces, Saxony, Hanover, Baden, Mecklenburgh, Hamburgh, Denmark, and most of the other Protestant states of Europe." These countries, then, have in two ways forfeited principles which even Rome still holds; since (1) Rome permits such unions in single cases only which to her judgment warrant the departure from the rule; she acknowledges the rule, even while in the plenitude of her power she dispenses with it; the others have abolished the rule itself. (2) These states, according to this account, have made the degrees of marriage a mere matter of political regulation.

The repeal of the law would in three ways shake the sacredness of marriage itself. (1) That sacredness depends upon the whole tone of our moral feeling; whatever weakens that feeling undermines that sacredness, even when it does not immediately bear upon the nature of *all* marriage; every thing which lowers marriage any way, affects it altogether; pollution of any sort injures the reverence felt towards the whole institution; a lowered tone about incest cannot consist with a high sense of marriage itself. (2) The way in which the change is proposed to be made adds to this evil, for it implies that marriage is only a civil institution, if incest is to be only what the State declares such, not dependent upon the law of God, or of the Church, or of human nature. If the State claims to make or unmake incest, it has virtually claimed the whole law of marriage as belonging to it. (3) The very principle whereon the sacredness of marriage depends, the unity of those united by it, is involved in this very first case. It is because "they are no more twain, but one flesh," that the wife's sister becomes the sister of the husband. And so, as S. Basil says, "as a man would not take the mother of his wife, nor the daughter of his wife, because neither would he his own mother or his own daughter, so neither the sister of his wife, because neither would he his own sister." Those, then, who deny that the

sister is akin to the husband must deny that the husband and wife are really one, and so at once strike at the very root of the holiness and mysteriousness of marriage, and in so doing treat very irreverently our Lord's own words. All this would sadly fall in with the relaxation already made, by which the State has already declared that it regards marriage no longer as a religious ordinance, allowing every one to contract it in his own way, dispensing with the high tone which the solemn service of the Church throws over it, and allowing the carnal to enter it almost "like the brutes which perish."

One can hardly hope that any who have been betrayed into engaging in such a cause should have misgivings, lest they should be unconscious agents of the Enemy in undermining the sacredness of marriage, and preparing the way for the coming of Antichrist, to which so many things now point; but, at least, the very possibility may well make others reconsider more correctly the whole subject, before, upon one inference from one text, they go against the plain declarations of Holy Scripture in that very context, and seek to overthrow the practice of the universal Church in her pure days, and of our own.

If this contamination is, by the blessing of Almighty God, to be averted from the Church, the clergy must prepare themselves to resist it, not as matter of expediency, but on principle, as confounding men's notions of incest, violating the practice of our own and the primitive Church, disturbing the sacredness of marriage, repealing the moral law of God, and preparing the way for every other abomination.

Your very faithful servant,

E. B. PUSEY.

APPENDIX.

LETTER OF S. BASIL ON THE MARRIAGE OF TWO SISTERS.

DEAR SIR,

THE Church is much indebted to a contemporary Review for condemning in the strong terms it deserves, a revolting attempt which is now being made to obtain legal sanction for marriages which are prohibited "in certain cases of affinity," more particularly referring to the case of "marriage with a deceased wife's sister." The Reviewer alludes to a Letter of S. Basil's on the subject, which is of itself so sensible and important, and so interesting, from the answer it supplies to those reasonings by which the repeal is now advocated, that I trust you will afford it a place in your Magazine.

I am, dear Sir, yours truly,

I. W.

"EPISTLE CXL.—TO DIODORUS.

"There have come to us letters, bearing the inscription of Diodorus, but in all other respects more suitable to some one else than to Diodorus; for it appears to me to be some mean contriver who has personated you, in order to render himself worthy of credit among his hearers, who, on being asked by some one whether it were lawful for him to marry the sister of his deceased wife, shuddered not at the question, but mildly afforded it a hearing, and with great boldness and earnestness aided him in the accomplishment of his impure passion. Now if I had the letter itself by me I would send it to you, and you would have had the means of defending yourself and the truth; but he who shewed the letter took it away again, and has been carrying it about as a trophy against us who had prohibited it from the beginning, and saying that he had a written authority. I have, therefore, now written to you, in order that we may attack this spurious account by a two-fold hand, so as to leave him no means by which he may injure those whom he falls in with."

"First of all we have to allege that which is of the greatest weight in such matters, the custom established among us, which is equivalent to a law, inasmuch as such ordinances have been handed down to us by holy men; and the custom is this—if a person at any time, mas-

tered by an impure passion, shall have fallen into a lawless union with two sisters, neither to account this a marriage, nor to receive such at all into the body of the Church before that they are separated from one another. So that, even had we nothing else to say, custom has sufficed as a safeguard of what is right; but since he who has written the letter has endeavoured, by means of a forgery, to introduce into society so great an evil, it seems requisite that we should not forego the support we may obtain from a discussion of the subject, although it be the case that, in matters very evident and palpable, the preconceived notion of each is preferable to any reasoning."

"It is written, he says, in the book of Leviticus, 'Thou shalt not take a wife to her sister, to vex her, to uncover her nakedness, beside the other in her life-time.' (Lev. xviii. 18.) Therefore he says it is evident that it is allowable to take the sister of a wife that is dead. Now to this I will first of all mention that saying, 'that whatsoever things the law saith, it saith to them who are in the law;' for otherwise we should be subject to circumcision, and the sabbath, and abstinence from meats. For surely it cannot be, that if we find any thing that runs hand in hand with our pleasures, we are to put ourselves under the yoke of legal slavery; but if any thing in the things of the law appears grievous, we are then to run off to the liberty which is in Christ. We are asked whether it is written that a man may marry one sister after having married another? We answer, what is both safe and true, that it is not written. But to infer that which arises from natural consequence, but is not expressed, is the part of the legislator, not of one who is citing the law; for in this way whoever would dare such a deed might take the sister even during the wife's life-time, for the same sophism will fit this case also. For it is written, he will say, 'thou shalt not take, *to vex her*;' so then he hath not prohibited taking her where there is no "vexing." Who so then pleadeth for passion will decide that the temper of the sisters hath nothing "vexing" in it. The reason, then, being done away for which he prohibits his living with both at once, what is to hinder his taking both sisters? But these things are not written we will grant it, neither is the other defined; but if a meaning is to be attached to it by way of inference, it would equally afford a licence to both cases. But, in order to get out of the difficulty, it will be necessary to recur to the circumstances which preceded the publication of the law; for the legislator does not appear to embrace every species of offences, but especially to interdict those of the Egyptians from among whom Israel had gone forth, and those of the Canaanites among whom they had come. For thus the passage is, 'After the doings of the land of Egypt, wherein ye dwelt, shall ye not do; and after the doings of the land of Canaan, whither I bring you, shall ye not do; neither shall ye walk in their ordinances.' (Lev. xviii. 3.) So that it is probable that this species of crime was not at that time one that found place among the Gentiles; so that on that account the lawgiver had no occasion to make provision against it, but considered the untaught custom of itself sufficient to convict that abomination.

How, therefore, when he interdicted the greater, did he pass over the less in silence? Because it appeared that to many of carnal minds, who were disposed to cohabit with two sisters yet living, the example of the patriarch might be prejudicial. But what ought we to do? to declare what things are written, or further to work out those things that are passed over in silence? To take a case in point, it is not written in these laws that father and son ought not to cohabit with one woman; and yet by the prophet it is denounced as the greatest of crimes. 'For the son,' it is said, 'and the father have gone in to one woman.' And how many other kinds of unclean passions are there which the teaching of devils hath invented, but the divine Scripture hath omitted to mention, not choosing to defile its own delicacy by the mere naming of things shameful, but condemning impurities in general terms. As the Apostle Paul says, 'But fornication and all uncleanness, let it not be once named among you, as becometh saints.' (Eph. v. 3.) By the term uncleanness including crimes of men and women that are unmentionable; so that it is not the case that silence affords licence to the lovers of pleasure."

"But I maintain that this point is not passed over in silence, but that the legislator hath prohibited it in the very strongest manner; for the expression, 'None of you shall approach to any that is near of kin to him, to uncover their nakedness,' (Lev. xviii. 6.) embraceth also this species of relationship. For what can be more akin to a man than his own wife, or rather than his own flesh? for 'they are no longer two, but one flesh.' So that by means of the wife the sister also passes into the kindred of the husband. So that, as he shall not take the mother of his wife, nor the daughter of his wife, because he shall not take his own mother nor his own daughter, so in like manner he shall not take the sister of his wife, because he cannot take his own sister; and, on the other hand, neither shall it be lawful for a woman to marry the kindred of her husband, for on either side the rights of kindred are common to both. But I, for my part, testify to every one deliberating concerning marriage that 'the fashion of this world passeth away, and that the time is short, so that they who have wives should be as they that have none' (1 Cor. vii. 29.); but if any one should perversely read to me that expression 'increase and multiply,' I smile at his not discerning the seasons of these laws. Second marriages are a remedy against fornication, not an occasion for impure desire. If they cannot contain let them marry, it is said; but not to let them in marrying act against all law."

"But these men, who have blinded their soul by dishonourable passion, have no respect even unto nature, for she of old hath distinguished the appellations of kind; for according to what relationship shall they address their children? Shall they call them brothers to each other, or cousins? for both appellations equally suit them, on account of this confused mixture. Make not, O man, the aunt to be the step-mother of infants! Do not arm with unrelenting jealousies one whose duty it is to cherish in the place of a mother, for step-mothers are the only kind of persons who extend enmity even beyond

death. Indeed, they who have been enemies from other causes are reconciled with the dead, but step-mothers after death commence their enmity. The sum of all that has been said is this—if any one, according to law, has a desire to marry, the whole world is open to him; but if he is actuated by passion, then on this account let it be more closely shut against him, 'that he may learn to possess his vessel in sanctification and honour, not in the lust of concupiscence.' I have more things which I am desirous to urge, but the length of my letter restrains me; and I pray that this our exhortation may prove more strong than the passion, or at all events that this pollution may find no place in my diocese, but may be confined to those places into which it has had the boldness to enter."

LETTERS OF BISHOP JEWEL AND ARCHBISHOP SHARP AGAINST MARRIAGE WITH TWO SISTERS.

Sir,

The following Letter of Bishop Jewel's will be read with interest, and his admonition to his unknown correspondent, "not in these troublesome and doubtful times, to call more matters in doubt without just cause, nor in this intemperance and science (licence?) of life, to open a gate to the breach of laws," was not more needed in the sixteenth century than in the nineteenth. It is interesting to observe how he too, with and after S. Basil, though falling much short of his energy, grounds his conviction of the unlawfulness of the marriage with two sisters on the "continual practice of all ages," yet, with him too, shews how the Scripture pleaded for it does not sanction it; other Scripture condemns it. (The Letter is printed in Strype's Parker, App. b. 2. No. 19. from the MS. in Corpus Christi College.)

E. B. P.

"After my hearty commendations; whereas ye desire to understand my poor advice touching certain words in the xviiith chapter of Leviticus, by which ye think it not unlawful for a man to marry successively his own wife's sister, I would ye had rather taken in hand some other matter to defend. For it is not the best way, in my judgment, neither in these troublesome and doubtful times, to call more matters in doubt without just cause, nor in this intemperance and science of life, to open a gate to the breach of laws. I reckon the words in Leviticus, whereupon you ground, are these, 'Uxorem et sororem suam ad lacessendam eam, ne ducas, ut retegas turpitudinem ejus, illa adhuc vivente.' Which words, I know, have been diversely

construed by divers men, and in some men's judgment seem to sound of your side. Pellican, Paul Fagius, and Lyra, with certain others, think such marriage to be lawful; and that God forbad the having of two sisters in matrimony at one time, both of them being together onlyve; and that for the spiteful and continual contention and jealousy, which must needs grow betwixt them, as appeared in the example of Jacob with his two wives, Rachel and Leah, and therefore some think the Jews continue such marriages among them, as lawful, until this day."

"All these things hitherto make on your side; and the same would not greatly mislike me, saving that I find the judgments of the best learned men now living, and the continual practice of all ages, and in manner very public honesty, to the contrary. There be otherwise women enough to have choice of, so that no man can justly say that necessity drove him to marry her, whom, in our manner of speech, he first called sister."

"The practice of former times appeareth by the canons; whereas it is decreed that only 'carnalis copula cum puella septem annorum dirimit matrimonium cum ejus puellæ sorore postea secutum.' But I know you make small stay upon the canons, and sooner rest yourself upon these words in the text, 'illa adhuc vivente.' And therefore thus you ground your reason; a man may not marry his wife's sister, while she is alive; ergo, he may marry her after she is dead. This reason, *a negativis*, is very weak, and makes no more proof in logic than this doth, 'Corvus non est reversus ad arcam donec exsiccatæ erant aquæ;' ergo, he returned again after the waters were dried up. Or, 'Joseph non cognovit eam, donec peperisset filium suum primogenitum;' ergo, Joseph knew after she was delivered of her first begotten child; or such other like."

"Yet will you say, although this manner of reason be weak, and the words make little for you, yet thus far the reason is good enough, for these words make not against you; which thing notwithstanding I might grant, yet will not this reason follow of the other side. There are no express words in the Levitical law whereby I am forbidden to marry my wife's sister; ergo, by the Levitical law such marriage is to be accounted lawful. For notwithstanding the statute in that case makes relation unto the xviiith chapter of Leviticus, as unto a place whereunto the degrees of consanguinity and affinity are touched most at large; yet you must remember that certain degrees are there left out untouched, within which, nevertheless, it was never thought lawful for men to marry. For example, there is nothing provided there by express words, but that a man may marry his own grandmother, or his grandfather's second wife, or the wife of his uncle by his mother's side. No, nor is there any express prohibition in all this chapter, but that a man may marry his own daughter. Yet will no man say that any of these degrees may join together in lawful marriage."

"Wherefore we must needs think that God in that chapter hath especially and namely forbidden certain degrees; not as leaving all

marriage lawful which he had not there expressly forbidden, but that thereby, as by infallible precedents, we might be able to rule the rest. As when God saith no man shall marry his mother, we understand that under the name of mother is contained both the grandmother and the grandfather's wife, and that such marriage is forbidden. And when God commands that no man shall marry the wife of his uncle by his father's side, we doubt not but in the same is included the wife of the uncle by the mother's side. Thus you see God Himself would have us to expound one degree by another."

"So likewise in this case, albeit I be not forbidden by plain words to marry my wife's sister, yet I am forbidden so to do by other words, which by exposition are plain enough; for when God commands me I shall not marry my brother's wife, it follows directly by the same that he forbids me to marry my wife's sister; for between one man and two sisters, and one woman and two brothers, is like analogy or proportion, which is my judgment in this case; and other such like ought to be taken for a rule. And therefore the rabbins of the Jews have expressly forbidden divers degrees by this rule, which God by plain words forbad not."

"And this is one part of the tyranny of the Bishop of Rome, that he will take upon him to rule God's commands at his pleasure, and by dispensation to make that lawful in one man for the time which God hath plainly forbidden as unlawful in all men for ever. He hath dispensed with a man to marry his own brother's wife, as you know; he hath dispensed with the brother to marry his own natural sister[a], as ye find in "Summa Angelica," in these words:—Papa. And what marvail? He would be omnipotent, and saith he may dispense, contra jus divinum, as you may see 16. q. 1 Quicunq. in Glosa."

"But thus, by the way, you have my mind touching your demand, and I doubt not but, all things well considered, the same mind will be your mind."

'Si quid novisti rectius istis,
'Candidus imperti; si non, his utere mecum.'

"Thus fare you heartily well."—From Sarum. Calend. Novem. 1561.

The Letter of Archbishop Sharp will also have its interest, as shewing the continuance of this discipline in our Church, and the view taken of these marriages in the beginning of the last century, and of their absolute nullity antecedent to any measures taken by the law to dissolve them. This is the more illustrated by the great tenderness with which the Archbishop writes, for which his son inserts the letter. (Life, t. i. pp. 209—211.)

"I know," says he, "Mr. Commissary, you have done nothing in this affair but what you ought to do; nor have the Bishop of Chester

[a] Vid. Pressius. This writ by Archbishop Parker's hand.

or I any power to stop your proceedings if we had a mind to it, which I dare say neither of us are inclined to, for it is certain this man and his pretended wife must be separated. But yet I could wish that all the tenderness might be used towards this poor man that the circumstances of the thing will admit of; my meaning is, that you will give him and his wife some time to think of this fault of theirs, and to receive convictions of the unlawfulness or nullity of this their marriage. And, therefore, if they be not already under the sentence of excommunication, I could wish that you would defer it to another time; or, if they be under that sentence already, that you would order the curate not to publish it till further orders; or, if it be already published, that you would not immediately take out the Writ de Excom. Capiendo, but give him time till all the means have been made use of to persuade him and his sister to obey the law in this matter. If you think this reasonable, then I would further beg of you to send some one of the clergymen about you, such an one as has reputation and understands these matters, to discourse both with the man and woman about the unlawfulness of this marriage, and to dispose them, by a representation of the sin they live in, to do that voluntarily which must otherwise unavoidably come upon them, to their greater hurt and damage,—I mean, total separation. I think all this would be charitable, and I hope it is consistent with the ecclesiastical laws; and I believe it will do you no injury, but tend to your reputation, &c.—Dec. 20, 1705."

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